

under section 215(i) of the Social Security Act that was disregarded in computing the basic entitlement rate.

(3) *Original and reopened awards to children.* The monthly payment rate shall be equal to the basic entitlement rate increased by the overall average percentage (rounded to the nearest tenth of a percent) of each legislative increase in the rates of educational assistance allowance under 38 U.S.C. 3531(b) which became effective concurrently with or subsequent to the effective date of the earliest adjustment under section 215(i) of the Social Security Act that was disregarded in computing the basic entitlement rate.

(4) *Subsequent legislative increases in rates.* The monthly rate of special allowance payable to a surviving spouse shall be increased by the same overall average percentage increase (rounded to the nearest tenth of a percent) and on the same effective date as any legislative increase in the rates payable under 38 U.S.C. 1311. The monthly rate of special allowance payable to a child shall be increased by the same overall average percentage increase (rounded to the nearest tenth of a percent) and on the same effective date as any legislative increase in the rates payable under 38 U.S.C. 3531(b).

(5) *Amendment of awards.* Prompt action shall be taken to amend any award of this special allowance to conform with evidence indicating a change in basic eligibility, any basic entitlement rate, or any effective date previously determined. It is the claimant's responsibility to promptly notify VA of any change in their status or employment which affects eligibility or entitlement.

(6) *Rounding of monthly rates.* Any monthly rate computed under the provisions of this paragraph, if not a multiple of \$1, shall be rounded to the next lower multiple of \$1.

(c) *Claimants not entitled to this special allowance.* The following are not entitled to this special allowance for the reasons indicated.

(1) Claimants eligible for death benefits under 38 U.S.C. 1151. The deaths in such cases are not service-connected.

(2) Claimants eligible for death benefits under 38 U.S.C. 1318. The deaths in such cases are not service connected.

(3) Claimants whose claims are based on an individual's service in:

(i) The Commonwealth Army of the Philippines while such forces were in the service of the Armed Forces pursuant to the military order of the President dated July 26, 1941, including recognized guerrilla forces (see 38 U.S.C. 107).

(ii) The Philippine Scouts under section 14, Pub. L. 190, 79th Congress (see 38 U.S.C. 107).

(iii) The commissioned corps of the Public Health Service (specifically excluded by section 156 of Pub. L. 97-377), or

(iv) The National Oceanic and Atmospheric Administration (specifically excluded by section 156 of Pub. L. 97-377).

(d) *Appellate jurisdiction.* VA shall have appellate jurisdiction of all determinations made in connection with this special allowance.

(e) *Claims—formal and informal.* Formal claims for this special allowance must be filed on a form prescribed by the Secretary of Veterans Affairs. When informal claims or inquiries as to eligibility are received, the appropriate application form shall be provided. In such cases, the date of receipt of the informal claim or inquiry will be accepted as the date of claim for this special allowance if a formal claim on the prescribed form is received within one year from that date.

(f) *Retroactivity and effective dates.* There is no time limit for filing a claim for this special allowance. Upon the filing of a claim, benefits shall be payable for all periods of eligibility beginning on or after the first day of the month in which the claimant first became eligible for this special allowance, except that no payment may be made for any period prior to January 1, 1983.

(Authority: Sec. 156, Pub. L. 97-377, 96 Stat. 1830, 1920 (1982))

[49 FR 21709, May 23, 1984, as amended at 54 FR 26030, June 21, 1989; 60 FR 20643, Apr. 27, 1995]

### §3.813 Interim benefits for disability or death due to chloracne or porphyria cutanea tarda.

(a) *Disability benefits.* Except as provided in paragraph (c) of this section, a

### §3.814

### 38 CFR Ch. I (7-1-00 Edition)

veteran who served in the active military, naval or air service in the Republic of Vietnam during the Vietnam era, and who suffers from chloracne or porphyria cutanea tarda which became manifest within one year after the date of the veteran's most recent departure from the Republic of Vietnam during such service, shall be paid interim disability benefits under this section in the same manner and to the same extent that compensation would be payable if such disabilities were service-connected.

(b) *Death benefits.* Except as provided in paragraph (c) of this section, if a veteran described in paragraph (a) of this section dies as a result of chloracne or porphyria cutanea tarda, the veteran's survivors shall be paid interim death benefits under this section based upon the same eligibility requirements and at the same rates that dependency and indemnity compensation would be payable if the death were service-connected.

(c) *Exceptions.* Benefits under this section are not payable for any month for which compensation or dependency and indemnity compensation is payable for the same disability or death, nor are benefits payable under this section (1) when there is affirmative evidence that the disease was not incurred by the veteran during service in the Republic of Vietnam during the Vietnam era, (2) when there is affirmative evidence to establish that an intercurrent injury or disease, which is a recognized cause of the disease for which benefits are being claimed, was suffered by the veteran between the date of the veteran's most recent departure from the Republic of Vietnam during active military, naval or air service and the onset of the claimed disease, or (3) if it is determined, based on evidence in the veteran's service records and other records provided by the Secretary of Defense, that the veteran was not exposed to dioxin during active military,

naval or air service in the Republic of Vietnam during the Vietnam era.

(d) *Similarity to service-connected benefits.* For purposes of all laws administered by VA (except chapters 11 and 13 of title 38 U.S.C.), a disease establishing eligibility for disability or death benefits under this section shall be treated as if it were service-connected, and the receipt of disability or death benefits shall be treated as if such benefits were compensation or dependency and indemnity compensation, respectively.

(e) *Effective dates.* Benefits under this section may not be paid for any period prior to October 1, 1984, nor for any period after September 30, 1986.

(Authority: Pub. L. 98-542)

[50 FR 34460, Aug. 26, 1985]

### **§3.814 Monetary allowance under 38 U.S.C. 1805 for a child suffering from spina bifida who is a child of a Vietnam veteran.**

(a) VA shall pay a monthly allowance based upon the level of disability determined under the provisions of paragraph (d) of this section to or for a child who it has determined is suffering from spina bifida and who is a child of a Vietnam veteran. Receipt of this allowance shall not affect the right of the child, or the right of any individual based on the child's relationship to that individual, to receive any other benefit to which the child, or that individual, may be entitled under any law administered by VA. If a child suffering from spina bifida is the natural child of two Vietnam veterans, he or she is entitled to only one monthly allowance under this section.

(b) Applicants for the monetary allowance under this section must submit an application to the VA regional office and include the information mandated on the following VA form entitled "Application for Spina Bifida Benefits":